

**Town of Milford
Zoning Board of Adjustment Minutes
February 7, 2013
Lawrence and Brenda Cassidy
Case #2013-02
Variance**

Present: Fletcher Seagroves, Chair
Zach Tripp
Bob Pichette
Kevin Taylor

Absent: Laura Horning
Len Harten

Secretary: Peg Ouellette

The applicants, Lawrence and Brenda Cassidy, owners of Map 27, Lot 39 in the Residence "A" district, are requesting a Variance from Article V, Section 5.02.4:A for the creation of a lot with 69 feet of frontage where 100 feet is required.

Motion to Approve: March 7, 2013

Fletcher Seagroves, Chairman, opened the meeting stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He informed all of the procedures of the Board. Lawrence Cassidy was present with his daughter, Lisa.

F. Seagroves reminded the applicant that since there were only four Board members present and three affirmative votes are required for approval, he had the right to be heard by a full five-member Board. He had the option to proceed or to request a postponement. The lack of a full five-member Board would not be grounds for an appeal. The applicant elected to proceed and signed the waiver. F. Seagroves read the notice of hearing into the record. The list of abutters was read. There were no abutters present.

F. Seagroves then invited the applicant to present his case.

L. Cassidy stated the property was purchased in 1998; it was listed as approximately 1 ¼ acre with a house, garage and mobile home on the property. The mobile home was a 1961 model; they tried to fix it up but it was too far gone. In 2006, they decided to replace the trailer with a new one. The old trailer was hooked up to a metal septic tank and water to the trailer came from the house. When the new trailer was purchased, they did it according to all the laws and now have a concrete pad under it, with hurricane tie-downs. At the same time, they put all the utilities underground and connected to town water and sewer and put electrical underground for a neat appearance.

They are requesting a variance for less than required footage. It doesn't affect any of the original boundaries of the property. It is a lot within the property. It has always had a driveway right up to it and the house, where his daughter lives, has a driveway on that side. They have always been known as 101 and 103 Souhegan Street. They are somewhat buffered on each side by shrubbery, trees, etc. He doesn't think abutters would suffer any problems because it is within his property but needs to request a variance from 100 ft to 69 ft.

F. Seagroves asked if they were only going to subdivide and nothing else will change.

L. Cassidy said nothing else will change.

Z. Tripp said they bought the lot in 1998 with two structures on it. They upgraded in 2006?

L. Cassidy said yes, and in 2006 they brought in a brand new mobile home.

Z. Tripp asked why they are subdividing now.

L. Cassidy said it was always known as 101 and 103 Souhegan. They just want a dividing line between the house and the mobile home.

F. Seagroves asked if Mr. Cassidy lives in the mobile home.

L. Cassidy responded no, someone else lives there.

B. Pichette stated there is a power pole between the trailer and house. He thought applicant stated they had put utilities underground.

L. Cassidy said the pole is right up close to the road.

B. Pichette said he thought it was to the back.

L. Cassidy said it is approximately 35 to 40 feet. There is a utility pole, but from that point to the trailer it is underground.

B. Pichette said he went by the property. There is a panel there also.

L. Cassidy said the picture shows the pole.

Z. Tripp asked for the current frontage of the entire lot.

L. Cassidy said frontage is 109. His daughter said that is for the separate lot.

L. Cassidy said 69 for the proposed.

Z. Tripp said about 178?

L. Cassidy said it says 132 more or less.

B. Pichette said it is over 100 feet?

L. Cassidy said yes, it does meet other requirements of 15,000 SF. He had property surveyed when he purchased it. To present this application, it was redone. There is plenty of room on either side for the 15-foot requirement. It doesn't show a driveway to the garage, but obviously there is one.

F. Seagroves referred to the ordinance section 5.0-2.4:A which states those areas serviced by both sewer and water shall be no less than 15,000 SF with 100 ft. frontage on a Class 5 or better road.

F. Seagroves asked for any further questions from the Board. There were none.

F. Seagroves opened the meeting for public comment. There was none. He then closed the public comment portion of the meeting.

L. Cassidy then read his application into the record.

F. Seagroves asked for questions from the Board.

K. Taylor said in addition to the criteria that must be met, on the back of the application it mentions section 6.03.5 regarding flood management.

Z. Tripp stated that wording is saying that a variance application may have other criteria, for example if it is within a flood plain.

Z. Tripp read into the record the comments from Bill Parker, Director of Community Development, on the application which stated there were no issues with the proposed subdivision from a planning perspective and that approval would allow for a lot with two residences in the Residence A District to become conforming with one single-family residence per lot. Resulting lot sizes would exceed minimum lot size requirements in the Residence A district.

There was no correspondence received with regard to this application.

F. Seagroves called for a discussion of the criteria questions.

1. Could the variance be granted without diminishing the value of abutting property?

Z. Tripp – yes. Didn't see how subdividing into two lots would diminish surrounding property.

K. Taylor – yes. Didn't see it diminishing any property.

B. Pichette – agreed

F. Seagroves – agreed. Looked like they were going to subdivide and everything else will stay the same. Even if the trailer were removed and a residence put in, it would not diminish the value of the abutting properties.

2. Would granting the variance not be contrary to the public interest?

B. Pichette – It doesn't change the character of the neighborhood. Only the property line changes.

K. Taylor – Only thing that changes is the property line. The neighborhood is still the same.

Z. Tripp – yes. Residence A is designed for low density, low intensity single-family lots. Granting would not be contrary to the public interest even though it would result in reduced frontage. The current has two residential units on the lot which he felt violated the zoning to a greater degree than the reduced frontage would. He felt it would be in the public interest.

F. Seagroves agreed. He didn't see the public would gain by denying this application. He didn't see anything will change.

3. Would denying the variance result in unnecessary hardship?

Z. Tripp, referring to the sub-paragraph B, subdividing the lot with two structures into two lots with one each is reasonable. Applicants have done it in a reasonable manner, placing lot lines in a way that they maintain the side setback. Resulting line ends up with less than 100 feet, but it was done in a reasonable manner. Regarding fair and substantial relationship, he would vote yes. Full application of the ordinance is not necessary for valid public purposes – he felt it is valid public purpose because it will become less non-conforming going from two structures on one lot to two lots with one structure on each. What is unique about this property is that it was bought with two residential structures on it and maintained it since '98, making upgrades. He thought the town would probably prefer to manage it as two lots, as well as the owners.

K. Taylor said it has been two lots for years and now they are maintaining it in two lots. He thanked the applicant for upgrading the area and fixing up the trailer.

B. Pichette agreed.

F. Seagroves agreed with what was stated by the other Board members.

3. Would granting the variance do substantial justice?

B. Pichette said it would add one more lot to the tax base- that is substantial justice.

K. Taylor said yes.

Z. Tripp said the public would have nothing to gain by denial. The public would gain by approving, for reasons stated by other Board members.

F. Seagroves agreed. As Zack read from the handbook, the loss to the individual is not outweighing the gain to the public. He didn't see a gain to the public by denying.

2. Could the variance be granted without violating the spirit of the ordinance?

K. Taylor said yes. He didn't see the spirit being violated at all.

Z. Tripp said the spirit of the ordinance in Residence A is low density and low intensity. They are not increasing those. The frontage is to help protect that density and intensity and not create odd-shaped lots. It is a reasonable subdivision. He didn't see how any future owners could use it to advantage. The trailer sits inside the setback.

B. Pichette agreed.

F. Seagroves agreed. The handbook speaks to the spirit of the ordinance. He didn't see any health, safety and general welfare risk. Taking down the power line to the trailer was a good safety measure—no worry about falling wires, etc.

F. Seagroves proceeded to the vote on the criteria.

Could the variance be granted without diminishing the value of abutting properties?

Z. Tripp – yes

B. Pichette – yes

K. Taylor – yes

F. Seagroves – yes.

Would granting the variance not be contrary to the public interest?

K. Taylor – yes

B. Pichette – yes

Z. Tripp – yes

F. Seagroves – yes

Would denying the variance result in unnecessary hardship?

Z. Tripp – yes

B. Pichette – yes

K. Taylor – yes

F. Seagroves –yes

Would granting the variance do substantial justice?

B. Pichette – yes

K. Taylor – yes

Z. Tripp – yes

F. Seagroves –yes

Could the variance be granted without violating the spirit of the ordinance?

Z. Tripp – yes

B. Pichette – yes

K. Taylor – yes

F. Seagroves – yes

Z. Tripp made a motion to approve Case #2013-02. (He pointed out that in the papers it says "2012" which should be corrected.

K. Taylor seconded the motion.

Final Vote:

Z. Tripp – yes

B. Pichette – yes

K. Taylor – yes

F. Seagroves – yes

F. Seagroves informed the applicant he had been approved and reminded him of the 30-day appeal period.